IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1174 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARTKUMAR I GANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1174 of 1991

MR MI PATEL for Petitioner No. 1

MR BY MANKAD, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 07/02/2002

ORAL JUDGEMENT

1. Dr.Bharatkumar Ishwarlal Gandhi, petitioner has filed this petition with a prayer to issue a writ of mandamus or any other writ or order directing the State

of Gujarat through Secretary, Legal Department respondent No.1 and the Director, Employees of State Insurance Corporation - respondent No.2 to treat the service rendered by the petitioner as Ayurvedic Medical Officer Class II in E.S.I. Scheme for the period between 6.12.1983 and 24.4.1989 as continuous service and to extend all the benefits of pension, gratuity, increment, leave encashment, earned leave, non-practising allowance, continuity of service and all other benefits made available to the Government servants to the petitioner on the basis that he has rendered continuous service for more than five years.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner is a graduate in Ayurvedic Medicine. He was appointed temporarily by the respondents as an Ayurvedic Medical Officer Class-II in the Employees State Insurance Scheme run by the respondents. It is submitted that though the petitioner was appointed on temporary basis, the post on which he was appointed was a permanent post. He was appointed on the said post till a qualified G.P.S.C. selected candidate was available. It has been stated that the petitioner has continuously worked on the said post from 6.12.1983 to 25.4.1989 with small breaks. In view of the same it has been contended that petitioner is entitled to get all the benefits which are made available to the permanent Government employees under the provisions of the Bombay Civil Service Rules and Pension Rules.

2.2 It has been averred in the petition that the services of the petitioner were terminated from 21.4.1989 on account of the fact that the candidate selected by the G.P.S.C. was made available for being appointed on the said post. It has been submitted that after his services were terminated, he requested the respondents to make available to him all the benefits which a Government servant would be entitled on his retirement from the Government service. He was paid an amount of Rs.5,105.35 on 19.7.89 on ad-hoc basis. The petitioner submitted that he is entitled to recover the amount from the State Government under the provisions of the Bombay Civil Services Rules and the Pension Rules. The petitioner requested the authorities to recover the various amounts in this behalf.

2.3 The petitioner thereafter made a reminder to the authorities concerned and ultimately by a communication dated 16.8.1990 the Administrative Medical Officer,

E.S.I. Dispensary, Petlad informed the petitioner that towards full and final settlement of all his claims the petitioner was paid a sum of Rs.12,229.55 by demand draft dated 10.8.190 and rest of the claims made by the petitioner cannot be entertained.

2.4 The respondent No.2 also by his communication dated 10.9.90 informed the petitioner that he is not entitled to continuity of service and the benefits available to him on that basis as the petitioner was appointed purely on a temporary and ad-hoc basis. It was also submitted that the petitioner was not entitled to notice pay, gratuity and other pensionary benefits. The authority also informed the petitioner that the arrears of his salary, house rent and increments and the non-practising allowance have been calculated on the basis of revised pay scale for the period from 1st January, 1986 to April 21, 1989 and that nothing remains due and payable to the petitioner in this behalf.

2.5 It was the contention of the petitioner that, as per the Government Resolutions dated 1st December, 1986, and 1st January, 1987 he is entitled to have encashment of his earned leave to the extent of 240 days and he is also entitled to other benefits in this behalf. In view of the same the aforesaid petition was filed on 6th December, 1990, before this Court.

3. When the matter was placed for hearing before this Court, this Court initially issued notice and thereafter matter was admitted and now it has come up for final hearing before me in this behalf.

4. Mr.M.I.Patel, learned Senior Counsel appeared on behalf of the petitioner. The learned counsel contended that as per the facts set out in the petition and the contention raised in the petition the petitioner is entitled to benefits as Ayurvedic Medical Officer Class-II in E.S.I. Scheme as a continuous service and he is also entitled to the benefits of pension, gratuity, increments, leave encashment, earned leave, non-practising allowance, continuity of service and all other benefits in this behalf. He has relied upon the Government Resolutions and also the provisions of the BCSR Rules and Pension Rules in this behalf. He has also submitted that the petitioner is also entitled to non-practising allowance and other benefits available under the act and the rules.

5. Mr.B.Y.Mankad, learned AGP appeared on behalf of the State of Gujarat. He has invited my attention to the

communication dated 10th September, 1990, issued by Director of Medical Services in which it has been stated that whatever amount which petitioner is entitled have been paid by the authority by demand draft dated 10.8.90 and also the arrears of increment, HRA, Non-practising allowance have been paid to the petitioner. However the petitioner is not entitled for the leave pay of 240 days and also not entitled to continuity of service.

5.1 It has been further stated that the petitioner is appointed absolutely on ad-hoc basis and as soon as new regular employee appointed to the said post the petitioner has no right to continue in service and therefore he is not entitled to notice pay, gratuity and pension in this behalf. The petitioner has already stated that even in 1989 the petitioner was already paid Rs.5105.35 in this behalf.

5.2 The learned AGP in support of his contention submitted that the petitioner is not entitled to any relief relied upon the judgment of this Court in the case of PREMJIBHAI GAMIT vs. EXECUTIVE ENGINEER (PANCHAYAT) R & B DIVISION II, SURAT & ANOTHER REPORTED IN 1998(3) GLR 2550, JAGDISH U.NANAVATY AND OTHERS vs. STATE OF GUJARAT AND OTHERS REPORTED IN 2000(2) GLR 1703 and also judgment of this Court in the case of JASHVANTKUMAR J.DESAI vs. SABARKANTHA DISTRICT PANCHAYAT AND OTHERS REPORTED IN 42(1) GLR 860 in para 6.2 on page 866 this Court has considered the judgment of the Hon'ble Supreme Court in the case of State of Gujarat v. P.J.Kampavat reported in 1993 (1) GLR 848 and other provisions of BCSR Rules and stated that the temporary employee has no right to continue employment as claimed by them.

6. I have considered all the three judgments which has been relied upon by the learned counsel for the respondent in this behalf. In my view, the appointment of petitioner was completely on ad-hoc basis though the same was on permanent post. In my view, in view of the judgment of the Hon'ble Supreme Court in the Arjunbhai J.Chauhan vs. State of Gujarat reported in 1997(3) GLR 2461 if the orders of the temporary appointment are there the petitioner has no right to employment in this behalf. Here also the order in which the petitioner has been relieved specifically states that he was appointed on ad-hoc basis and as the regular persons available come into service he is not entitled for any non-practising allowance, gratuity or pension in this behalf and therefore the judgments cited by the learned counsel for the respondent is clearly applies to this case. In my view there is no substance in the contention of the

petitioner in this behalf. In view of the same, the petition is dismissed with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

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